



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 230914-0219]**

**RTID 0648-XD411**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2023 Commercial and Recreational Closures for Gag in the South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures for gag in the exclusive economic zone (EEZ) of the South Atlantic. NMFS estimates that both commercial and recreational landings of gag have reached the respective new commercial and recreational annual catch limits (ACLs) for the 2023 fishing year. Accordingly, NMFS will close both the commercial and recreational sectors for the harvest and possession of gag in the South Atlantic EEZ to protect the gag resource from overfishing.

**DATES:** This temporary rule is effective from 12:01 a.m. eastern time on October 23, 2023, through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email:

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**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes gag and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in gutted weight.

NMFS recently published the final rule to implement Amendment 53 to the FMP (88 FR 65135, September 21, 2023). For gag, Amendment 53 reduced the sector ACLs, and revised commercial trip limits, recreational bag, vessel, and possession limits, and recreational accountability measures (AMs). For the 2023 fishing year, Amendment 53 reduced the commercial ACL from 374,519 lb (169,879 kg) to 85,326 lb (38,703 kg) and reduced the recreational ACL from 359,832 lb (171,807 kg) to 90,306 lb (40,962 kg). Amendment 53 also established a rebuilding plan for gag, and revised the overfishing levels, acceptable biological catch, annual optimum yield, and sector allocations for gag. The final rule for Amendment 53 is effective October 23, 2023.

#### *Gag Commercial Sector*

On October 23, 2023, the revised commercial ACL (commercial quota) for the 2023 fishing year for gag will

be 85,326 lb (38,703 kg). The commercial AM for gag requires NMFS to close the commercial sector when its ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS estimates that for the 2023 fishing year, commercial landings of gag have reached, and already exceeded, the revised commercial ACL. Accordingly, the harvest and possession of South Atlantic gag for the commercial sector is closed effective at 12:01 a.m. eastern time on October 23, 2023, through December 31, 2023.

During the commercial closure, the sale or purchase of gag taken from the South Atlantic EEZ is prohibited. The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper with gag on board must have landed and bartered, traded, or sold such gag before October 23, 2023. The prohibition on sale or purchase does not apply to the sale or purchase of gag that were harvested, landed ashore, and sold before October 23, 2023, and were held in cold storage by a dealer or processor. Additionally, the recreational bag and possession limits and the sale and purchase prohibitions for gag under the commercial closure apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of whether the gag are harvested in state or Federal waters,

as specified in 50 CFR 622.190(c)(1).

Additionally, the commercial AM at 50 CFR 622.193(c)(1)(ii) specifies that if the commercial ACL is exceeded, and the combined commercial and recreational ACL specified at 50 CFR 622.193(c)(3) is exceeded, and gag are overfished, then NMFS will reduce the commercial ACL in the following fishing year by the amount of the commercial ACL overage in the prior fishing year. NMFS will evaluate whether it is necessary for the 2024 commercial ACL to be reduced by the amount of the 2023 commercial ACL overage once NMFS has finalized 2023 commercial landings information. If necessary, NMFS will publish a notice for any 2024 commercial ACL reduction in the **Federal Register**.

*Gag Recreational Sector*

On October 23, 2023, the revised recreational ACL for the 2023 fishing year for gag will be 90,306 lb (40,962 kg). The recreational AM for gag requires NMFS to close the recreational sector when its ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS estimates that for the 2023 fishing year, recreational landings of gag have reached and already exceeded the revised recreational ACL. Accordingly, the harvest and possession of South Atlantic gag for the recreational sector is closed effective at 12:01 a.m. eastern time on October 23, 2023, through December 31, 2023. During the

recreational closure, the bag and possession limits for gag in or from the South Atlantic EEZ are zero.

Additionally, the revised recreational AM at 50 CFR 622.193(c)(2)(ii) as implemented through the final rule to implement Amendment 53 to the FMP (88 FR 65135, September 21, 2023), specifies that if the recreational ACL is exceeded, then NMFS will reduce the recreational fishing season in the following fishing year to prevent the recreational ACL from being exceeded, and NMFS will use the best scientific information available to determine if reducing the length of the recreational season is necessary. Therefore, once the 2023 recreational landings information has been finalized, NMFS will evaluate if it is necessary for the 2024 recreational fishing season to be reduced based on 2023 landings. If a fishing season reduction is necessary, NMFS will publish a notice for any 2024 recreational fishing season reduction or associated recreational fishing season closure in the **Federal Register**.

*January through April Gag Seasonal Closure*

Additionally, a seasonal closure is in place for the commercial and recreational sectors for gag and associated grouper species from January through April each fishing year as specified in 50 CFR 622.183(b)(1). During this seasonal closure for the recreational and commercial sectors for gag from January through April each fishing

year, no person may fish for, harvest, or possess any gag in or from the South Atlantic EEZ. Therefore, the commercial and recreational harvest of gag will not commence until May 1, 2024.

**Classification**

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Act. These actions are required by 50 CFR 622.193(c)(1)(i) and the revised measures at 50 CFR 622.193(c)(2)(i) as implemented through the final rule to implement Amendment 53 to the FMP (88 FR 65135, September 21, 2023), which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and are exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on these actions, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closures of the gag commercial sector and the gag recreational sector have already been subject to notice and public comment, and all that remains is to notify the public of the sector closures. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to implement these actions as soon as possible to protect gag, because the capacity of the fishing fleet allows for rapid harvest of the commercial

and recreational ACLs. Prior notice and opportunity for public comment would require time and would potentially result in continued harvest in excess of the established commercial and recreational ACLs. Given the large reductions in the commercial and recreational harvest levels resulting from the implementation of Amendment 53, NMFS wants to provide as much notice of these sector closures as possible to allow fishers time to prepare for changes to their fishing seasons.

For the reasons stated earlier, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d) (3).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 28, 2023.

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Jennifer M. Wallace,  
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National Marine Fisheries Service.